

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAVELL FOX

Plaintiff,

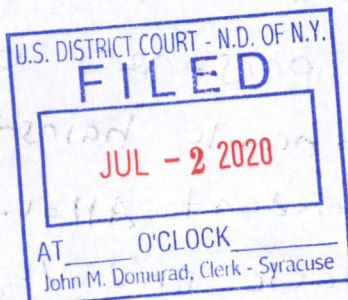
-V-

BERNARD SHEFTIC

Defendant

9:19-CV-498
(BKS/ATB)

MEMORANDUM OF LAW IN SUPPORT
OF PLAINTIFFS MOTION FOR
SUMMARY JUDGEMENT PURSUANT
TO FED. R. CIV. P. 56



JAVELL FOX Pro-Se
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June 30, 2020

PRELIMINARY STATEMENT

Plaintiff Javell FOX Pro-se, is an inmate at Great Meadows Correctional Facility and respectfully submit this Motion for Summary Judgement pursuant to Fed. R. Civ. P. 56. Plaintiff suffered Discrimination, Equal protection, and Retaliation.

Plaintiff was punished by defendant for wearing a Mohawk hairstyle. Defendant Allowed other prisoners of his favor to wear A Mohawk hairstyle without punishment. Defendant Allowed white prisoners, and Black and Native American prisoners wear there religious and cultural hairstyles of pony tails, dreadlocks, skinheads and long hair as religious symbols.

Plaintiff's Mohawk hairstyle is a religious symbol and was discriminated against and denied equal protection. Defendant further punished plaintiff for filing civil

Suits and grievances, even after plaintiff showed defendant his court order signed by district court Judge Thomas J McAvoy ~~defendant~~^{to} wear his Allowed Mohawk hairstyle, defendant still punished plaintiff.

Therefore ~~plaintiffs~~^{plaintiffs} Motion

For summary judgement must be granted - defendant does not qualify for immunity. Defendants violations of plaintiffs constitutional rights were done so intentionally and with malice,

POINT I

RETALIATION (COA 5)

On August 29, 2018 plaintiff was incarcerated at Auburn C.F., when defendant Sheftic approached him about his hairstyle when he was coming from orientation. Plaintiff showed Sgt Sheftic / Defendant his court order signed by senior District court Judge

Thomas J. McAvoy allowing plaintiff to wear his Mohawk hairstyle.

See exhibit A. on August 30, 2018

Defendant Sheftic locked

Plaintiff for wearing his Mohawk hairstyle in violation of

Plaintiff's court order his reason being was because plaintiff filed

a civil suit and grievances.

Plaintiff was acting in

protected conduct, Defendant took adverse action, and there

is clear causal connection to

prove retaliation. Due to retaliation

of Defendant plaintiff was locked away in a cell, deprived the privilege

without due process of speaking to

his family, participate in

recreation and said confinement

caused plaintiff recurring back

pains and headaches, emotional

anguish by Plaintiff's mental health

being re-aggravated, plaintiff

Suffers from anxiety, PTSD, and Depression due to similar nature of ongoing retaliation and confinement for his hairstyle.

Defendant clearly Retaliated against plaintiff See *Bennett v Goord* 343 F.3d 133, 137 (2d Cir. 2003) and *Gill v Pidlypchak*, 389 F.3d 379, 381 (2d Cir. 2004) Defendant told plaintiff that he was punishing plaintiff for filing a lawsuit.

Therefore Plaintiff Motion for Summary Judgment Retaliation Claims must be granted (COA #)

POINT II (COA 4) (COA 2, 3)
PLAINTIFFS EQUAL PROTECTION AND DISCRIMINATION CLAIMS MUST BE GRANTED

Defendant Sheriff allows other prisoners in other religious groups to wear a Mohawk

hairstyle without punishment.
 Defendant Sheftic also allowed
 other prisoners from other
 cultural and religious groups
 wear there religious hairstyles
 such as white prisoners he allowed
 them to wear there Norse long or
 skin haircuts, Black to wear
 there Dreadlocked haircuts and
 Native Americans wear there
 long hairstyles. however he
 punished plaintiff for wearing
 a Mohawk hairstyle which is
 sincere to his Anunaki faith.
 when other prisoners of other
 religions wore a Mohawk he
 never punished them see
 (exhibit B - declaration Ariel Myers)

even after plaintiff
 showed defendant Sgt Sheftic
 his court order permitting plaintiff
 to wear his Mohawk hairstyle
 signed by a district court

Judge, even with this knowledge Defendant Shastie Denied plaintiff his right to the equal protection of the law and subjected plaintiff to discrimination applying a different standard to plaintiff than other similarly situated individuals see *Skehan v. Village of Mamaroneck*, 465 F.3d 96, 111 (2d Cir, 2006) Defendant intentionally and purposefully discriminated against plaintiff. see *Phillips v. V. Girdich*, 408 F.3d 124, 129 (2d Cir, 2005) plaintiff being kept locked and punished ~~and~~ for wearing his religious Mohawk hairstyle other prisoners wear Mohawk hairstyles and other religious hairstyles free of punishment this difference in treatment can not survive the appropriate

level of scrutiny plaintiff was
singled out because of his religion
and religious hairstyle, therefore
plaintiffs discrimination and equal
protection ^{claims must} be granted.
POINT I I I

RELIGION (COA I)

THE First Amendment to the
United States constitution of
America established that no
law can prohibit or respect
a religion (emphasis added) therefore
Defendants violation of plaintiff
First Amendment rights to wear a
sincerely held religious hairstyle,
a symbol of his Anunaki Faith,
and Defendant keeplock plaintiff
for exercising his religious belief
by his religious hairstyle for
no penological reason, is a clear
violation of plaintiffs First
Amendment rights and motion
for summary judgement must
be granted in regards to first
Amendment claims.

See Ford v. McGinnis, 352 F.3d 582,
588 (2d Cir., 2003) 352 F.3d 594,
598

CONCLUSION

WHEREFORE, for all the foregoing reasons plaintiff respectfully request that the court grants plaintiff's Motion for summary judgment and awards plaintiff damage award in the amount of \$ 325,000.00 and any other relief that the court deem just and proper.

To, William E. Arnold
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